

21 C.J.S. Courts § 261

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Courts

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VIII. Concurrent and Conflicting Jurisdiction

A. Courts of Same State

2. Transfer of Cases

a. In General

§ 261. Mandatory or discretionary nature of transfer of cases

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

West's Key Number Digest, [Courts](#)  483, 484

Use of the word "shall" in a provision stipulating that if a proceeding is commenced in an inappropriate court, that court shall transfer the cause to an appropriate court generally demonstrates that transfer of an improperly filed case is mandatory, not discretionary.

Generally, use of the word "shall" in a provision stipulating that if a proceeding is commenced in an inappropriate court, that court "shall" transfer the cause to an appropriate court demonstrates that transfer of an improperly filed case is mandatory, not discretionary.¹ For example, a chancellor in equity is required to transfer an action seeking damages to an appropriate court of law even where the plaintiff also seeks equitable relief under a constitutional provision stipulating that causes asserting legal claims erroneously brought in equity court "shall" be transferred to a court of law.²

On the other hand, in the absence of a mandatory provision, once a court of equity obtains jurisdiction in the case, the equity court has discretion either to transfer the parties to a court of law for adjudication of their law claims or conclude the litigation by giving complete relief.³ The purpose is to prevent a circuitry of action and expense.⁴

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Footnotes

- 1 Fla.—[Kaweblum v. Thornhill Estates Homeowners Ass'n, Inc.](#), 755 So. 2d 85 (Fla. 2000).

Miss.—[City of Ridgeland v. Fowler](#), 846 So. 2d 210 (Miss. 2003).

Small claims
The phrase "shall transfer" in the practice book section on transfer from the small claims docket to the regular docket is generally construed as mandatory rather than permissive.

Conn.—[Cannavo Enterprises, Inc. v. Burns](#), 194 Conn. 43, 478 A.2d 601 (1984).
- 2 Miss.—[City of Ridgeland v. Fowler](#), 846 So. 2d 210 (Miss. 2003).

Exorbitant premiums
Because a suit arising out of the sale of insurance policies and allegedly exorbitant premiums sounds in tort and contract law instead of equity, such suit must be transferred from equity to a court of law even if the plaintiff seeks a constructive trust, an accounting, and injunctive relief.

Miss.—[Union National Life Ins. Co. v. Crosby](#), 870 So. 2d 1175 (Miss. 2004).
- 3 Va.—[Advanced Marine Enterprises, Inc. v. PRC Inc.](#), 256 Va. 106, 501 S.E.2d 148 (1998).
- 4 Va.—[Advanced Marine Enterprises, Inc. v. PRC Inc.](#), 256 Va. 106, 501 S.E.2d 148 (1998).